



House of Representatives

General Assembly

File No. 415

February Session, 2016

Substitute House Bill No. 5563

House of Representatives, April 4, 2016

The Committee on Banking reported through REP. LESSER of the 100th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE RESIDENTIAL SUSTAINABLE ENERGY PROGRAM.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 7-121n of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2017*):

3 (a) As used in this section:

4 (1) ["Energy improvements"] "Qualifying improvements" means any
5 renovation or retrofitting of qualifying real property to reduce energy
6 consumption or installation of a [renewable energy] system for clean
7 energy, as defined in section 16-245n, or customer-side distributed
8 resources, as defined in section 16-1, permanently fixed to such
9 qualifying real property to service qualifying real property, [provided
10 such renovation, retrofit or installation is permanently fixed to such
11 qualifying real property] including, but not limited to, (A) related
12 improvements to address water conservation, (B) waste reduction, (C)
13 health and safety issues, including, but not limited to, asbestos, mold

14 and lead remediation, and (D) resiliency measures, including, but not
15 limited to, flood-resistant construction and hurricane resistant
16 construction;

17 (2) ["Qualifying real property"] "Qualifying residential real
18 property" means a single-family or multifamily residential dwelling
19 [or a nonresidential building, regardless of ownership, that a
20 municipality has determined can benefit from energy improvements]
21 of four or fewer units that meets the qualifications established for the
22 residential sustainable energy program;

23 (3) "Property owner" means an owner or owners of qualifying
24 residential real property who [desires] desire to install [energy]
25 qualifying improvements and [provides] who provide free and willing
26 consent to the [contractual] benefit assessment against the qualifying
27 residential real property; [and]

28 [(4) "Sustainable energy program" means a municipal program that
29 authorizes a municipality to enter into contractual assessments on
30 qualifying real property with property owners to finance the purchase
31 and installation of energy improvements to qualifying real property
32 within its municipal boundaries.]

33 (4) "Residential sustainable energy program" means a program that
34 facilitates qualifying improvements and utilizes the benefit assessment
35 authorized by this section as security for the financing of qualifying
36 improvements;

37 (5) "Municipality" means a municipality, as defined in section 7-369;

38 (6) "Benefit assessment" means the assessment authorized by this
39 section;

40 (7) "Participating municipality" means a municipality that has
41 entered into a written agreement, as approved by its chief executive
42 officer or its legislative body, with the bank pursuant to which the
43 municipality has agreed to assess, collect, remit and assign benefit
44 assessments to the bank in return for qualifying improvements for

45 benefited property owners within such municipality and costs
46 reasonably incurred in performing such duties;

47 (8) "Bank" means the Connecticut Green Bank, established under
48 section 16-245n; and

49 (9) "Third-party capital provider" means an entity, other than a
50 bank, that provides financing, leases or power purchase agreements
51 directly to benefited property owners for qualifying improvements.

52 [(b) Any municipality, that determines it is in the public interest,
53 may establish a sustainable energy program to facilitate the increase of
54 energy efficiency and renewable energy. A municipality shall make
55 such a determination after issuing public notice and providing an
56 opportunity for public comment regarding the establishment of a
57 sustainable energy program.]

58 (b) (1) The bank shall establish a residential sustainable energy
59 program in the state. In furtherance of such program, the bank is
60 authorized to make appropriations and issue bonds, notes or other
61 obligations for the purpose of financing (A) qualifying improvements,
62 (B) related energy audits, and (C) verification reports of the installation
63 and effectiveness of such improvements. The bank may encourage
64 third-party capital providers to provide financing directly to benefited
65 property owners in lieu of or in addition to the bank providing such
66 financing. The bonds, notes, other obligations or other financing
67 provided by third-party capital providers may be secured as to both
68 principal and interest by a (i) pledge of the liens, (ii) such other
69 collateral, and (iii) revenues to be derived from the residential
70 sustainable energy program, including revenues from benefit
71 assessments on qualifying residential real property, as authorized in
72 this section.

73 (2) When the bank or third-party capital provider has made
74 appropriations for qualifying improvements for qualifying residential
75 real property, the participating municipality in which the qualifying
76 residential real property is located shall, upon notice from the bank or

77 third-party capital, levy a benefit assessment against the qualifying
78 residential real property benefited by such qualifying improvements.

79 (3) Any such qualifying improvement shall be permanently fixed to
80 such property but may include (A) the property owners share of
81 ancillary construction costs to extend the energy infrastructure as
82 necessary to enable the clean energy or distributed energy
83 improvement, (B) a third-party ownership arrangement, including, but
84 not limited to, a power purchase agreement and a lease agreement,
85 provided the duration of any such third-party ownership agreement is
86 not less than the lesser of the average estimated useful life of the
87 principal components or ten years, and (C) subscribership in a shared
88 clean energy facility, as defined in public act 15-113.

89 [(c)] (4) [Notwithstanding the provisions of section 7-374 or any
90 other public or special act that limits or imposes] The bank shall
91 develop program guidelines governing the terms and conditions [on
92 municipal bond issues, any municipality that establishes a sustainable
93 energy program under this section may issue bonds, as necessary, for
94 the purpose of financing (1) energy improvements; (2) related energy
95 audits; and (3) renewable energy system feasibility studies and the
96 verification of the installation of such improvements. Such financing
97 shall be secured by special contractual assessments on the qualifying
98 real property.] under which funding may be made available to the
99 residential sustainable energy program, in consultation with
100 representatives from the banking industry, municipalities and
101 property owners, and serve as an aggregating entity for the purpose of
102 securing state and private third-party financing for qualifying
103 residential real property especially benefited thereby.

104 (5) The bank shall adopt general standards establishing eligible
105 qualifying improvements, products and measures that satisfy energy
106 savings, water conservation or other clean energy sustainability or
107 resiliency goals consistent with the purpose of the residential
108 sustainable energy program.

109 (6) The bank (A) shall establish, in consultation with the Department

110 of Banking, a loan loss reserve or other credit enhancement program
111 for qualifying residential real property, and (B) may use the services of
112 one or more private, public or quasi-public third-party administrators
113 to administer, provide support or obtain financing for the residential
114 sustainable energy program.

115 (7) The bank shall adopt consumer protection standards in
116 consultation with the Department of Banking with which any third-
117 party capital provider or private, public or quasi-public third-party
118 administrator shall demonstrate compliance before participating in the
119 residential sustainable energy program.

120 (8) The bank shall adopt, in consultation with the Department of
121 Banking, qualifications for third-party capital providers to participate
122 in the residential sustainable energy program.

123 (9) The residential sustainable energy program shall comply with all
124 federal directives or guidelines with regard to the property-assessed
125 clean energy model for residential properties.

126 [(d) (1) Any municipality that establishes a sustainable energy
127 program pursuant to this section may partner with another
128 municipality or a state agency to (A) maximize the opportunities for
129 accessing public funds and private capital markets for long-term
130 sustainable financing, and (B) secure state or federal funds available
131 for this purpose.

132 (2) Any municipality that establishes a sustainable energy program
133 and issues bonds pursuant to this section may supplement the security
134 of such bonds with any other legally available funds solely at the
135 municipality's discretion.

136 (3) Any municipality that establishes a sustainable energy program
137 pursuant to this section may use the services of one or more private,
138 public or quasi-public third-party administrators to provide support
139 for the program.]

140 [(e)] (c) Before establishing a program under this section, the

141 [municipality] bank shall provide notice to the electric distribution
142 company, as defined in section 16-1, that services the municipality.

143 [(f)] (d) If the property owner [of record of qualifying real property]
144 requests financing from the bank or a third-party capital provider, for
145 [energy improvements] qualifying improvements under this section,
146 the [municipality implementing the sustainable energy program] bank
147 shall:

148 [(1) Require performance of an energy audit or renewable energy
149 system feasibility analysis on the qualifying real property before
150 approving such financing;

151 (2) Enter into a contractual assessment on the qualifying real
152 property with the property owner in a principal amount sufficient to
153 pay the costs of energy improvements and any associated costs the
154 municipality determines will benefit the qualifying real property and
155 may cover any associated costs;]

156 [(3)] (1) Impose requirements and criteria to ensure that the
157 proposed [energy] qualifying improvements are consistent with the
158 purpose of the residential sustainable energy program; and

159 [(4)] (2) Impose requirements and conditions on the financing to
160 ensure timely repayment, including, but not limited to, underwriting
161 criteria and procedures for placing a lien on [a] the qualifying
162 residential real property as security for [which an owner defaults on]
163 repayment of the benefit assessment.

164 (e) (1) The bank or the third-party capital provider may enter into a
165 financing agreement with the property owner of qualifying residential
166 real property. After such agreement is entered into, and upon notice
167 from the bank, the participating municipality shall (A) place a caveat
168 on the land records indicating that a benefit assessment and a lien are
169 anticipated upon completion of qualifying improvements for such
170 property, or (B) at the direction of the bank, levy the benefit
171 assessment and file a lien on the land records based on the estimated

172 costs of the qualifying improvements prior to the completion or upon
173 the completion of such improvements.

174 (2) The bank, or the third-party capital provider, shall disclose to the
175 property owner the costs and risks associated with participating in the
176 residential sustainable energy program and the terms and conditions
177 of the assessment, including, but not limited to, term, payments and
178 remedies for default and foreclosure. Such costs and risks include, but
179 are not necessarily limited to, (A) the failure of the property owner to
180 pay the benefit assessment, (B) the benefit assessment remaining on
181 the property until satisfied, (C) the potential to impede the sale of the
182 property, (D) the potential for violation of certain provisions under any
183 existing indebtedness secured by the benefited property, and (E) the
184 potential for the assessment to be paid off when such indebtedness is
185 refinanced or when the property is sold. The bank, or the third-party
186 capital provider, shall disclose to the property owner entering into a
187 financing agreement the effective interest rate of the benefit
188 assessment, including, but not limited to, fees charged by the bank or
189 the third-party capital provider to administer the program. The bank
190 or the third-party capital provider shall notify the property owner that
191 such owner may rescind any financing agreement entered into
192 pursuant to this section not later than three business days after
193 entering into such agreement.

194 [(g)] (f) Prior to entering a contractual assessment, the [municipality]
195 bank or third-party capital provider shall provide each property owner
196 the following notice, which shall be set forth in at least fourteen-point
197 bold type: SEEK LEGAL ADVICE BEFORE PARTICIPATING IN THIS
198 LOAN PROGRAM TO ENSURE UNDERSTANDING OF POTENTIAL
199 CONSEQUENCES, INCLUDING A POSSIBLE DEFAULT UNDER
200 YOUR MORTGAGE.

201 [(h)] (g) Any benefit assessment levied pursuant to this section shall
202 have a term not to exceed the [calculated payback period for] lesser of
203 (1) the average estimated useful life of the installed [energy] qualifying
204 improvements, as determined by the [municipality, and shall have no

205 prepayment penalty. The municipality] bank or a contractor eligible to
206 install such improvements under the residential sustainable energy
207 program, or (2) twenty-five years. The bank or the third-party capital
208 provider shall set a fixed rate of interest for the financing provided or a
209 fixed payment schedule for leases, power purchase agreements or
210 other such approved financing structures for the repayment of the
211 principal assessed amount at the time the benefit assessment is made.
212 Such interest rate, as may be supplemented with state or federal
213 funding as may become available, shall be sufficient to pay the
214 financing costs of the program, including delinquencies.

215 [(i) Assessments] (h) Benefit assessments levied pursuant to this
216 section and the interest, fees and any penalties thereon shall constitute
217 a lien against the qualifying residential real property on which they are
218 made until they are paid. [Such lien] If the agreement for the benefit
219 assessment provides, the benefit assessment shall be [levied and] paid
220 in installments and each installment payment shall be collected in the
221 same manner as the [general] property taxes of the participating
222 municipality on real property, including, in the event of default or
223 delinquency, [with respect to] any penalties, fees and remedies. [and
224 lien priorities, provided such lien shall not have priority over any prior
225 mortgages.]

226 [(j) The area encompassing the sustainable energy program in a
227 municipality may be the entire municipal jurisdiction of the
228 municipality or a subset of such.]

229 (i) Each such lien levied through the residential sustainable energy
230 program shall be recorded and released in the manner provided for
231 property tax liens and shall be subordinate to all liens on the
232 qualifying residential real property in existence at the time the lien for
233 the assessment is filed on the property. Each such lien levied through
234 the residential sustainable energy program shall be superior to any
235 other lien on the qualifying residential real property recorded after
236 such filing except a (1) first mortgage on the property, and (2) lien for
237 taxes of the municipality on real property. To the extent a benefit

238 assessment is paid in installments and any such installment is not paid
239 when due, the benefit assessment lien may be foreclosed, or enforced
240 by levy and sale of such real property in accordance with chapter 204,
241 to the extent of any unpaid installment payments and any penalties,
242 interest and fees related thereto. If such benefit assessment lien is
243 foreclosed, or enforced by levy and sale of the real property in
244 accordance with chapter 204, such benefit assessment lien shall survive
245 the judgment of the foreclosure, or levy and sale, to the extent of any
246 unpaid installment payments of the benefit assessment secured by
247 such benefit assessment lien that was not the subject of such judgment,
248 or levy and sale. The form of collector's deed set forth in section 12-158
249 shall be used in a levy and sale of real property to satisfy a benefit
250 assessment lien.

251 (j) A participating municipality shall assign to the bank, or the third-
252 party capital provider as applicable, any liens filed by the tax collector
253 pursuant to this section, as provided in the written agreement between
254 the participating municipality and the bank. The bank or third-party
255 capital provider may sell or assign, for consideration, any and all liens
256 received from the participating municipality at its sole discretion. The
257 assignee or assignees of such liens shall have and possess the same
258 powers and rights at law or in equity as the participating municipality
259 and its tax collector would have had if the lien had not been assigned
260 with regard to the precedence and priority of such lien, the accrual of
261 interest, and the fees and expenses of collection. The assignee shall
262 have the same rights to enforce such liens as any private party holding
263 a lien on real property, including, but not limited to, foreclosure and a
264 suit on the debt. In accordance with subsection (h) of this section, the
265 assignee shall also have the right to enforce the lien through the levy
266 and sale procedure under chapter 204. Costs and reasonable attorneys'
267 fees incurred by the assignee as a result of any foreclosure action or
268 other legal proceeding brought pursuant to this section and directly
269 related to the proceeding, including costs and fees incurred in
270 enforcement of the lien by the levy and sale under section 12-140 and
271 subsection (c) of section 12-157, shall be taxed in any such proceeding
272 against each person having title to any property subject to the

273 proceedings. Such costs and fees may be collected by the assignee at
 274 any time after demand for payment has been made by the assignee.

275 Sec. 2. (*Effective January 1, 2017*) On or before July 1, 2017, and
 276 annually thereafter, the Connecticut Green Bank shall submit a report,
 277 in accordance with the provisions of section 11-4a of the general
 278 statutes, to the joint standing committees of the General Assembly
 279 having cognizance of matters relating to banking and energy and
 280 technology, summarizing the progress of its residential sustainable
 281 energy program in the state.

282 Sec. 3. Subdivision (24) of section 36a-485 of the general statutes is
 283 repealed and the following is substituted in lieu thereof (*Effective from*
 284 *passage*):

285 (24) "Residential mortgage loan" means any loan primarily for
 286 personal, family or household use, except financing under a
 287 sustainable energy program pursuant to section 7-121n, as amended by
 288 this act, that is secured by a mortgage, deed of trust or other equivalent
 289 consensual security interest on a dwelling or residential real estate
 290 upon which is constructed or intended to be constructed a dwelling;

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>January 1, 2017</i>	7-121n
Sec. 2	<i>January 1, 2017</i>	New section
Sec. 3	<i>from passage</i>	36a-485(24)

Statement of Legislative Commissioners:

In Section 1(a)(1), Subpara. designators "(A)", "(B)", "(C)" and "(D)" were added for clarity; in Section 1(a)(3), "contractual" was bracketed and "benefit" was inserted for consistency with other provisions of the section; in Section 1(a)(7), "chief officer" was replaced with "chief executive officer" for accuracy; in Section 1(b)(3), "renovation, retrofit or installation" was replaced with "qualifying improvement" to avoid redundant language and for consistency with other provisions of the section; in Section 1(b)(4), "serving" was changed to "serve" and "aggregate" was changed to "aggregating" for accuracy; in Section 2,

"and annually thereafter" was inserted after "2017," and the second sentence was deleted for consistency with standard drafting conventions.

BA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Banking Dept.	BF - Potential Revenue Gain	up to \$3,900	up to \$3,900

Note: BF=Banking Fund

Municipal Impact: None**Explanation**

The bill replaces the municipally administered "Sustainable Energy Program" with a similar program administered by the Connecticut Green Bank and allows it to issue bonds. This will not result in a state liability for the bonds because the language specifies that the debt is not the responsibility of the State of Connecticut.

The bill may result in the licensure of up to three third-party capital providers. This would result in potential revenue gain to the Banking Fund of up to \$3,900 annually. A third-party capital provider is required to pay a mortgage lender license fee of \$1,000 and mortgage originator license of \$300 for a total of \$1,300 annually.

In addition, the bill requires the Connecticut Green Bank to consult with the Department of Banking (DOB) on certain provisions. This does not result in a fiscal impact to the DOB as they have the necessary expertise.

Lastly, the bill has no fiscal impact to municipalities, as no municipalities are currently participating in the Sustainable Energy Program.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of licenses.

OLR Bill Analysis**sHB 5563*****AN ACT CONCERNING THE RESIDENTIAL SUSTAINABLE ENERGY PROGRAM.*****SUMMARY:**

This bill eliminates the municipally administered “Sustainable Energy Program” and replaces it with a similar program administered by the Connecticut Green Bank. (Both programs are commonly known as Property Assessed Clean Energy (PACE) programs.) Under the current municipal PACE program, participating municipalities can issue bonds to provide loans for private property owners to make certain energy improvements (e.g. installing solar panels). The property owners must repay the loans, which are a lien against the property, in the same way they pay their property taxes. In practice, no municipalities have adopted the program.

Similar to the current program, the Green Bank’s program must provide financing for certain energy improvements backed by a lien on the property that must be repaid through a benefit assessment on the property. Unlike the current program, however, the bill’s program (1) provides financing from the Green Bank or other third-party capital providers, rather than the municipality; (2) allows financing for a wider range of improvements; (3) limits financing to residential properties (the Green Bank separately offers a PACE program for commercial properties); and (4) makes the program’s liens subordinate to any liens already on the property when the assessment is filed, but superior to any subsequent liens, except for first mortgages and property tax liens.

The bill authorizes the Green Bank to fund the program and encourage third-party capital providers to also provide financing under it. It requires the bank, in consultation with the Banking

Department, to establish a loan loss reserve or other credit enhancement program for properties eligible for the program's financing. It also requires the bank to establish guidelines and standards for the program and its participants and provide certain notices and disclosures to participating property owners. Financing provided in the program must meet certain conditions established by the bill.

Under the bill, once a property owner agrees to finance his or her improvements through the program, a participating municipality must file a lien and levy a benefit assessment on the property. It must assign the lien and assessment to the Green Bank or third-party and remit payments from the assessment to them. The assessment can be enforced through foreclosure or by levy and sale of the property under the property tax law. The bill specifies that loans under the program are not residential mortgage loans regulated under the state law for nondepository financial institutions.

Lastly, the bill requires the Green Bank, beginning by July 1, 2017, to submit an annual progress report about the program to the Banking and Energy and Technology committees.

EFFECTIVE DATE: January 1, 2017, except the provision that exempts the program from the law that regulates residential mortgages is effective upon passage.

ELIGIBLE IMPROVEMENTS & PROPERTIES AND PARTICIPATING MUNICIPALITIES

The bill requires the Green Bank to establish a residential sustainable energy program that facilitates qualifying improvements and uses a benefit assessment as security for financing them. The program must comply with all federal directives or guidelines about the PACE model for residential properties.

Qualifying Improvements

The "qualifying improvements" which the program must support are any (1) renovations or retrofitting to reduce energy consumption or

(2) installations of clean energy systems or customer-side distributed resources that are permanently fixed to the property. These can include related improvements that address (1) water conservation; (2) waste reduction; (3) health and safety issues such as asbestos, mold, and lead remediation; and (4) resiliency measures such as flood- and hurricane-resistant construction.

The improvements can also include:

1. the property owner's share of ancillary construction costs to extend any energy infrastructure the clean or distributed energy improvement needs to operate;
2. third-party ownership arrangements, including power purchase agreements and leases, if their terms run for at least 10 years or the principal components' average estimated useful life, whichever is shorter; and
3. subscribership in a shared clean energy facility (i.e., a clean energy-powered electricity generating facility to which customers subscribe for either a percentage interest in or a set amount of the total amount of electricity produced).

Under the bill, "clean energy" systems are those that the law allows the Green Bank to support using the Clean Energy Fund (e.g., solar, wind, fuel cells, certain combined heat and power systems, and thermal storage systems.) "Customer-side distributed resources" are (1) electricity generators that can generate less than 65 megawatts and are located on a retail electricity customer's premises (e.g., fuel cells, solar photovoltaic systems, or small wind turbines) or (2) certain electric demand reduction measures used by an electric company's retail end user, such as peak reduction systems and demand response systems.

Qualifying Residential Real Property

Under the bill, the qualifying improvements must be on "qualifying residential real property," which is a single-family or multifamily

residential dwelling with no more than four units.

Participating Municipalities

To participate in the program, municipalities must enter into a written agreement with the Green Bank that requires the municipality to assess, collect, remit, and assign the benefit assessments to the bank in return for qualifying improvements for the municipality's benefitted property owners and the municipality's costs reasonably incurred in doing so. The agreement must be approved by the municipality's chief officer or legislative body.

Before establishing the program, the Green Bank must notify the electric distribution company (i.e., Eversource and United Illuminating) that serves the municipality.

GREEN BANK POWERS

To implement the program, the bill authorizes the Green Bank to make appropriations for, and issue bonds, notes, or other obligations to finance, (1) qualifying improvements, (2) related energy audits, and (3) reports that verify the improvements' installation and effectiveness. The bank can also encourage third-party capital providers to provide financing directly to benefitted property owners instead of, or in addition to, the bank.

The principal and interest of the bonds, notes, other obligations, or third-party financing may be secured by (1) a pledge of the liens, (2) other collateral, and (3) the program's revenue, including revenue from the benefit assessments on qualifying properties.

The Green Bank may also use one or more private, public, or quasi-public third party administrators to administer, provide support, or obtain financing for the program.

GUIDELINES AND STANDARDS

The bill requires the Green Bank to develop program guidelines to govern the terms and conditions for providing funding under the program. In doing so, it must consult with representatives from the

banking industry, municipalities, and property owners. The guidelines must also cover how the bank serves as an aggregating entity for securing state and private third-party financing for properties benefitted by the program.

The bank must adopt general standards establishing eligible qualifying improvement products and measures that satisfy energy saving, water conservation, or other clean energy sustainability or resiliency goals consistent with the program's purpose.

In consultation with the Banking Department, the Green Bank must also adopt (1) consumer protection standards that any provider or administrator must comply with before participating in the program and (2) qualifications for third-party capital providers to participate in the program.

FINANCING PROCESS

When a property owner requests financing under the program, the Green Bank must impose (1) requirements and criteria to ensure that the proposed improvements are consistent with the program's purpose and (2) financing conditions to ensure timely repayment, including underwriting criteria and procedures for placing a lien on the property as security for repayment of the benefit assessment. The bank, in consultation with the Banking Department, must establish a loan loss reserve or other credit enhancement program for the program's financing.

Notice and Disclosures

The bill allows the Green Bank or a third-party capital provider to enter into a financing agreement with a qualified property's owner who freely and willingly consents to a contractual assessment against the property (presumably, the "contractual assessment" is the program's benefit assessment). The Green Bank or third-party provider must disclose to the property owner the benefit assessment's terms and conditions, including its term, payments, and remedies for default and foreclosure. They must also disclose the costs and risks

related to:

1. the property owner's failure to pay the benefit assessment,
2. the assessment remaining on the property until it is satisfied,
3. the assessment's potential to impede the property's sale,
4. potentially violating certain provisions under any existing indebtedness secured by the property, and
5. the potential for the assessment to be paid off when the indebtedness is refinanced or the property is sold.

The bank or third-party provider must disclose to the property owner entering into a financing agreement the benefit assessment's effective interest rate, including any administrative fees charged by the bank or provider. They must also notify the property owner that the owner may rescind the financing agreement within three business days after entering into it.

Before entering a contractual assessment, the bank or third-party provider must also provide the property owner with a notice with at least 14-point bold type that says: "SEEK LEGAL ADVICE BEFORE PARTICIPATING IN THIS LOAN PROGRAM TO ENSURE UNDERSTANDING OF POTENTIAL CONSEQUENCES, INCLUDING A POSSIBLE DEFAULT UNDER YOUR MORTGAGE."

Benefit Assessments

After the agreement is entered into, and upon notice from the bank, the bill requires the participating municipality to either (1) place a caveat on the land records indicating that a benefit assessment and lien are anticipated on the property once the improvements are completed or (2) at the bank's direction, levy the benefit assessment and file a lien on the land records based on the improvements' estimated cost prior to completion or upon their completion. When the bank or third-party provider makes appropriations for improvements, the subject property's participating municipality must, upon notice from the bank

or provider, levy a benefit assessment against the property.

The program's benefit assessment cannot have a term that exceeds the lesser of (1) the improvements' average estimated useful life or (2) 25 years. The improvements' average estimated useful life must be determined by the Green Bank or a contractor who is eligible to install them under the program. The bank or third-party provider must set a fixed interest rate for the financing or a fixed payment schedule for leases, power purchase agreements, or other approved financing structures, to repay the principal assessed when the benefit assessment is made. The interest rate, as supplemented with state or federal funding that may become available, must be sufficient to repay the program's financing costs, including delinquencies.

Liens

Under the bill, the program's benefit assessments, and interest, fees, and penalties on them are a lien on the property until they are paid. If an agreement for an assessment provides for it, the assessment must be paid in installments with each payment collected the same way that the participating municipality collects property taxes, including any penalties, fees, and remedies.

Each lien levied through the program must be recorded and released the same way as property tax liens and must be subordinate to all liens on the property in existence when the benefit assessment lien is filed. Each lien levied under the program must be superior to any liens recorded after it, except for a first mortgage on the property and municipal property tax liens.

The bill requires a participating municipality to assign to the bank or applicable third-party provider any of the program's liens filed by the tax collector, as provided in the written agreement between the municipality and the Green Bank. The bank or provider may sell or assign their liens at their sole discretion.

Enforcement

To the extent that the assessment is paid in installments, whenever a

payment is late the assessment may be foreclosed or enforced by the property's levy and sale under the property tax law, to the extent of any unpaid installment payments and related penalties, interest, and fees. If the lien is foreclosed or enforced by a levy and sale, it must survive the foreclosure judgment, or levy and sale, to the extent that any unpaid payments were not the subject of the judgment, levy, or sale. The collector's deed used in property tax liens must be used in a levy and sale to satisfy a benefit assessment lien.

Regarding the liens' precedence and priority, interest accrual, fees, and expenses, the bill gives the liens' assignees the same powers and rights at law or in equity that the town and its tax collector would have had if the lien had not been assigned. The assignee has the same rights to enforce the liens as any private party holding a lien on real property, including foreclosure, a suit on the debt, and the levy and sale procedure. The assignee's costs and attorney's fees incurred in a foreclosure or other legal proceeding under the bill, including costs and fees incurred to enforce the lien by levy and sale, must be taxed against the property's owner. The assignee can collect the costs and fees any time after the assignee makes a demand for payment.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/15/2016)